IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY PENSION, HEALTH BENEFIT AND EDUCATIONAL FUNDS	:	CIVIL ACTION
v.	:	
GENERAL ELEVATOR OF DETROIT, INC. and ELEVATOR CONCEPTS, INC.	:	NO. 96-8212

Decision Under Fed. R. Civ. P. 52(a)

Ludwig, J. August 10, 1998

This non-jury decision is entered following a hearing held December 11, 1997. Fed. R. Civ. P. 52(a). The complaint sets forth claims under the Labor Management Relations Act (LMRA), 29 U.S.C. § 141 et seq. (1994), and the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 301 et seq. (1994). Delinquent contributions are alleged to be due under a collective bargaining agreement (Count I) and a settlement agreement involving two outstanding judgments (Count II).[1] Jurisdiction is federal question — LMRA; exclusive under ERISA. 28 U.S.C. § 1331; 29

[1] Count I also demands interest, liquidated damages, and auditor's fees under 29 U.S.C. § 1132(g), compl. ¶ 10; count II, interest on the amounts due under the judgments, together with attorney's fees and costs. Id. ¶ 17.

Count III sought contributions from defendant Elevator Concepts, Inc., under the collective bargaining agreement. The parties have agreed, however, that Elevator Concepts, Inc., is not liable to plaintiffs. Am. pretr. stip., at 5, ¶ 11.

At hearing, plaintiffs stated that they intended to move for leave to amend the complaint to allege alter ego liability on the part of defendant General Elevator of Detroit. Tr. at 101-03, Dec. 11, 1997. No motion, however, was filed.

U.S.C. §§ 185, 1132 (1994). See also Board of Trustees of the Hotel and Restaurant Employees Local 25 v. Madison Hotel, Inc., 97 F.3d 1479, 1483 (D.C. Cir. 1996) (ERISA jurisdiction exists for disputes over ERISA-related settlement agreement).

I.

Facts Based on Stipulation

The following, which are part of the amended pretrial stipulation, are approved as findings of fact.

> General Elevator of Michigan, at all times relevant to this matter, and General Elevator of Detroit, since April 1994, were signatory to the collective bargaining agreement requiring contributions to be made to the Plaintiffs pursuant to the Agreements and Declarations of Trust of the Plaintiff Funds.
>
> On October 12, 1993, Judgment was entered in the United States District Court for the Eastern District of Pennsylvania against General Elevator of Michigan and in favor of the Trustees of the National Elevator Industry Pension, Health Benefit and Educational Funds in Civil Action No. 93-4147, captioned Trustees of the National Elevator Industry Pension, Health Benefit and Educational Funds v. General Elevator of Michigan, in the total amount of $49,533.39. The balance of the Judgment in Civil Action No. 93-4147 due and owing the Trustees of the National Elevator Industry Pension, Health Benefit and Educational Funds is $3,087.19.
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> On June 1, 1994, Judgment was entered in the United States District Court for the Eastern District of Pennsylvania against General Elevator of Michigan and in favor of the Trustees of the National Elevator Industry Pension, Health Benefit and Educational Funds in Civil Action No. 94-1806, captioned Trustees of the National Elevator Industry Pension, Health Benefit and Educational Funds v. Gen-

eral Elevator of Michigan, in the total amount of $68,505.44. The balance of the Judgment in Civil Action No. 94-1806 due and owing the Trustees of the National Elevator Industry Pension, Health Benefit and Educational Funds is $68,505.44.

On or about July 15, 1994, Plaintiffs, by Michigan counsel, John G. Adam, Esquire, issued a garnishment [in the United States District Court for the Eastern District of Michigan] pursuant to its judgment at C.A. 93-4147 against General Elevator of Michigan, in which proceeding Plaintiffs claimed that funds garnished and in the possession of the garnishee were due to General Elevator of Michigan.

On or about August 2, 1994, Defendant General Elevator of Detroit, Inc., by its counsel, Levon G. King, objected to the garnishment of said funds.

On or about December 30, 1994, Defendant General Elevator of Detroit, Inc., by its president, Douglas Scott, offered to settle the garnishment proceeding in a writing directed to Plaintiffs' Michigan counsel.

On or about January 12, 1995, Plaintiffs' attorney, Scott A. Cronin, Esquire, and Douglas Scott discussed the offer made by General Elevator of Detroit, Inc., to settle the garnishment proceeding; and, on January 12, 1995, Scott A. Cronin, Esquire, forwarded to Douglas Scott a letter containing a counter-proposal to settle the garnishment proceeding.

On January 18 and 23, 1995, Douglas Scott on behalf of Defendant General Elevator of Detroit, Inc., and Scott A. Cronin, Esquire, on behalf of Plaintiffs, Trustees of the National Elevator Industry Pension, Health Benefit and Educational Funds executed a Settlement Agreement obligating Defendant General Elevator of Detroit, Inc., to pay the Judgment debts of General Elevator of Michigan as set forth in Civil Action Nos. 93-4147 and 94-1806.

> Payments totalling $11,653.21 have been made on behalf of Defendant General Elevator of Detroit, Inc., pursuant to the Settlement Agreement.
>
> Defendant admits that it is liable for contributions to Plaintiffs as revealed by the audit report in the amount of $3,214.44.
>
> Defendant admits that it is liable for interest on late paid contributions to Plaintiffs for amounts due and owing subsequent to the above-referenced judgments as set forth in the miscellaneous assessment report in the amount of $5,036.27.
>
> Defendant admits that Plaintiffs' claimed liquidated damages are in the amount of $9,910.79.
>
> Defendant admits that the auditor's fees in connection with the examination of the books and records of General Elevator of Detroit, Inc., total $5,975.
>
> Defendant Elevator Concepts, Inc., is not liable to Plaintiffs for any contributions, as Elevator Concepts, Inc., performs no work covered by the Collective Bargaining Agreements of I.U.E.C. Local Union No. 36.

Am. pretr. stip., at 1-5.

II.

Facts Based on Evidence

The following facts are found from evidence received at trial:

1. In 1980, Douglas Scott became employed by General Elevator of Michigan, Inc., an elevator maintenance and repair company owned in part by his father-in-law, Harry Gaither. Tr. at 5-6, 48. His duties initially were driving a company truck and

maintaining the spare parts department. Tr. at 62. He became a vice-president and served in that capacity at various times through 1994. Tr. at 5-6; plaintiffs' exhs. 1-3. Over this period, Scott had periodic dealings with plaintiffs' attorneys in the firm of O'Donoghue & O'Donoghue regarding delinquent employer contributions. Plaintiffs' exhs. 1-3.

2. Since 1985, Scott has been president and 50 per cent owner of defendant Elevator Concepts, Inc., an elevator manufacturing company. Tr. at 3-4, 62.

3. General Elevator of Michigan was originally called General Elevator Company but — at some point in the mid-1980s — changed its name to distinguish itself from a company in Maryland of the same name. Tr. at 12, 29. After changing its name, however, General Elevator of Michigan continued to use checks and letterheads of "General Elevator Company." Tr. at 20-22; plaintiffs' exhs. 20-23. General Elevator of Michigan and defendants General Elevator of Detroit and Elevator Concepts occupied separate offices within the same building. Tr. at 11.

4. In 1993, Scott, as vice-president of finance for General Elevator of Michigan, assisted in the winding down of that company. At that time, General Elevator of Michigan was no longer actively bidding work. Tr. at 6-7.

5. On August 24, 1993 plaintiffs' Philadelphia attorney Scott A. Cronin sent a letter to Douglas Scott regarding C.A. No. 93-4147. The letter stated: "[T]he Trustees cannot entertain any offer of settlement from General Elevator Company directly as it

appears that General has retained legal counsel in this matter." Plaintiffs' exh. 6; tr. at 101. On September 2, 1993 Douglas Scott responded, in writing:

> Please be advised that General Elevator Company has not retained legal counsel in this matter. Any communication to or from James Walkerdene or any other attorney with regards to this matter has not been authorized by an officer of General Elevator Company, and is not recognized by the corporation.

Plaintiffs' exh. 7. The letter encouraged Cronin to deal directly with Douglas Scott about a proposed settlement of C.A. No. 93-4147. Id.

6. In April 1994, General Elevator of Michigan ceased to be an active company. At that time defendant General Elevator of Detroit, Inc. — also an elevator maintenance and repair company — came into existence. General Elevator of Detroit took over many, but not all, of the maintenance and service contracts formerly held by General Elevator of Michigan. Tr. at 8. Like General Elevator of Michigan, General Elevator of Detroit used checks and letterhead denominated "General Elevator Company." Tr. at 20-22; plaintiffs' exhs. 20-23. Since 1994, Douglas Scott has been president of General Elevator of Detroit. Tr. at 5.

7. In April 1994, General Elevator of Michigan had accounts receivable valued at close to $300,000. Tr. at 35.

8. In May 1994, plaintiffs' Michigan attorney John G. Adam took Scott's deposition in connection with the judgment in C.A. No. 93-4147 against General Elevator of Michigan. Scott told

Adam that he and General Elevator of Michigan were unrepresented. Tr. at 79-80.

9. In July 1994, plaintiffs filed the Michigan garnishment set forth in the amended stipulation, see supra at 3, believing that General Elevator of Detroit was the successor corporation to General Elevator of Michigan. Tr. at 96.

10. After the garnishment, Scott retained Levon King, Esq., to file objections on behalf of General Elevator of Detroit. Tr. at 38. On September 13 and 14, 1994 Scott sent letters and made phone calls to Adam, asking him to lift the garnishment. Tr. at 38-39, 55-56, 80. Though Scott was accustomed to dealing directly with Adam, tr. at 54, Adam informed him that because King had been retained in the garnishment matter, Adam could not speak directly with him without King's permission. Tr. at 82-83.

11. Thereafter, Adam telephoned King to find out if he was aware that Scott had contacted Adam about the garnishment. King said he was not, but that Scott "had a pattern of speaking for himself and at times, you know, bypassing his counsel." Tr. at 68. King then gave Adam permission to talk to Scott directly, stating that Scott wanted to resolve the matter himself. Tr. at 83-84. Adam was not surprised because such consent to work out a payment plan directly with the employer was commonplace. Tr. at 85. The only other communication King had from Adam or Cronin was a notice of release of the garnishment. King did not call Scott after receipt of the notice, and did not send any statement for services

after initially filing the objection to the garnishment. Tr. at 69, 74, 76.

12. After receiving King's permission, Adam dictated a letter to Scott, dated September 26, 1994, stating that King had consented to direct negotiations. Adam then informed Cronin of King's consent. Cronin told Adam not to send the letter to Scott because it did not address vacation pay issues. Adam did not send the letter. Tr. at 87-88; plaintiffs' exh. 28.

13. On December 30, 1994 Scott faxed a letter from the office of Elevator Concepts to Adam with a proposal that General Elevator of Detroit pay plaintiffs $4,680 due on the Inkster Twin Towers contract in exchange for a release of the garnishment. Scott signed the letter on behalf of "General Elevator Company." Joint exh. 5; tr. at 40. Adam forwarded the letter to Cronin. Tr. at 91.

14. On January 12, 1995 Cronin sent a letter to Scott with a counter-proposal for settling the garnishment. The letter was addressed to "General Elevator Company." The terms of the counter-proposal were as follows:

> (1) Upon release of the garnishment, General Elevator will submit payment to the Funds in care of O'Donoghue & O'Donoghue in the sum of $4,680.00; and
>
> (2) On or before February 15, 1995, General Elevator will submit payment to the Funds in care of O'Donoghue & O'Donoghue in the sum of $2,000.00; and
>
> (3) On or before the 15th of each and every following month, General Elevator will submit payment in the sum of $2,000.00 to the Funds

> in care of O'Donoghue & O'Donoghue until all amounts due as the result of Civil Action Nos. 93-4147 and 94-1806 entered in the U.S. District Court for the Eastern District of Pennsylvania are paid in full less liquidated damages in the amount of $10,898.04; and
>
> (4) General Elevator Company will pay all wages, including vacation pay, owed to its employees, who are member[s] of the International Union of Elevator Constructors; and
>
> (5) General Elevator Company will remain current with its present contributions to the National Elevator Industry Funds during the term of this Agreement.

Joint exh. 6.

15. The parties to the settlement agreement, signed on January 18 and 23, 1995, were plaintiffs and General Elevator of Detroit. Joint exh. 7, at 1. The agreement:

> PARTIES: Trustees of National Elevator Industry Pension, Health Benefit and Educational Funds (hereinafter "NEI") and General Elevator Company of Detroit, Inc. (hereinafter "General")
>
> WHEREAS, NEI holds two Judgments against General Elevator Company of Michigan, Inc., entered in the United States District Court for the Eastern District of Pennsylvania, Civil Action Nos. 93-4147 and 94-1806; and
>
> WHEREAS, as the result of these Judgments, NEI garnished the proceeds of a contract known as the Inkster Twin Towers, Inkster Housing Commission, formerly possessed by General Elevator of Michigan, Inc.; but, which is now in the custody and control of General; and
>
> WHEREFORE, NEI and General, wishing to resolve this matter without further litigation, hereby agree as follows:

1. Upon execution of this Agreement, NEI will release the Inkster Twin Towers' garnishment; and

2. Upon release of the garnishment, General Elevator will submit payment to the Funds in care of O'Donoghue & O'Donoghue, 1056 Public Ledger Building, 150 South Independence Mall West, Philadelphia, Pennsylvania 19106 in the sum of $4,680.00; and

3. On or before February 15, 1995, General Elevator will submit payment to the Funds in care of O'Donoghue & O'Donoghue in the sum of $2,000.00; and

4. On or before the 15th of each and ever[y] following month, General Elevator will submit payment in the sum of $2,000.00 to the Funds in care of O'Donoghue & O'Donoghue until all amounts due as the result of Civil Action Nos. 93-4147 and 94-1806 entered in the U.S. District Court for the Eastern District of Pennsylvania are paid in full less liquidated damages in the amount of $10,898.04; and

5. General will pay all wages, including vacation pay, owed to members of the International Union of Elevator Constructors; and

6. General will remain current with its present contributions to the NEI Funds during the term of this Agreement.

7. Once General has paid all obligations as set forth in this Agreement, then NEI will file a Praecipe to Mark Judgment Satisfied for each Judgment listed above.

Date: 1-23-95
/s/ Scott Cronin, Atty. for the Trustees.

Date: 1-18-95
/s/ Douglas Scott, President, General Elevator Company of Detroit, Inc.

Joint exh. 7. Cronin did not send a copy of the executed agreement to King. Tr. at 98.

16. On January 18, 1995, Scott understood that his signature on the settlement agreement would result in the release of the garnishment on Inkster Twin Towers. Tr. at 16.

17. After the signing of the settlement agreement, plaintiffs released the garnishment. Tr. at 17.

18. On January 18 and 23, 1995, it was the intention of the parties to the settlement agreement that General Elevator of Detroit would be responsible for the payments specified in paragraphs 2-6 of the agreement.

19. On March 15, 1995 Scott wrote a letter to Scott Cronin of O'Donoghue & O'Donoghue — with a check for $4,680 enclosed — thanking him for the release of the garnishment and stating that the payment was made "as per our agreement." Plaintiff's exh. 20. The letterhead and the check referred to the paying entity as "General Elevator Company." Id.; plaintiffs' exh. 21. Scott made this payment in his capacity as president of General Elevator of Detroit.

20. On April 27, 1995 Scott wrote a letter to Scott Cronin of O'Donoghue & O'Donoghue enclosing a check for $2,000 and stating that the payment was made "as per our agreement." Plaintiff's exh. 22. The letterhead and the check referred to the paying entity as "General Elevator Company." Id.; plaintiffs' exh. 23. Scott made this payment in his capacity as president of General Elevator of Detroit.

21. On October 27, 1995 Scott sent a check for $5,000 to Scott Cronin of O'Donoghue & O'Donoghue stating that the payment

was made "[p]ursuant to an agreement with [General Elevator Company of Michigan]." Plaintiff's exh. 25. The check is drawn on the account of "Elevator Concepts Ltd." Id.; tr. at 25.

22. On August 21, 1995 Scott sent a letter on "General Elevator Company" stationery to Scott Cronin of O'Donoghue & O'Donoghue. The letter — written in Douglas Scott's capacity as president of General Elevator of Detroit — stated that although his company had "done fairly well" at keeping up with current contributions, ["w]e have not done as well with the $2,000 payments toward GEM's arrears." The letter said that General Elevator of Detroit was owed $60,000 on a public school contract and that "[i]t was in anticipation of receiving that amount that we were confident that we could live up to the terms of our agreement." Plaintiffs' exh. 24; tr. at 27, 30-33.

III.

Discussion

At issue here are funds created under a collective bargaining agreement between Local 36 of the International Union of Elevator Constructors and, initially, General Elevator of Michigan; later, defendant General Elevator of Detroit. Compl. ¶ 2. The funds constitute ERISA "employee benefit plans" under 29 U.S.C. § 1002(3). Plaintiff trustees are ERISA "fiduciaries" of the funds under 29 U.S.C. § 1132(e)(1). General Elevator of Michigan and defendant General Elevator of Detroit are NLRA "employers" under 29

U.S.C. §§ 142(3) and 152(2); Local 36 is an NLRA "labor organization" under 29 U.S.C. § 152(5).

Delinquent contributions (Count I) — In the amended pretrial stipulation, at 4, ¶ 10(a), defendant General Elevator of Detroit admitted liability under 29 U.S.C. § 1145[2] for $3,214.44 in delinquent contributions. General Elevator of Detroit also admitted liability for $5,036.27 in interest on the contributions under 29 U.S.C. § 1132(g)(2)(B). Am. pretr. stip., at 4, ¶ 10(b). Under § 1132(g)(2)(C)(ii), plaintiffs are also entitled to liquidated damages of $9,910.79.

Plaintiffs claim $5,975 in auditor's fees as reasonable costs under § 1132(g)(2)(D). Plaintiff's post-trial brief, at 15-17. General Elevator of Detroit does not dispute this amount. Am. pretr. stip., at 4, ¶ 10(d). Paragraph eight of the Agreement and Declaration of Trust between the parties states that "in any case where the Trustees have claimed in a lawsuit any amount due as disclosed by the audit, then the Employer shall be liable for all costs associated with the audit." Joint exh. 1, at 6. "[A] contractual basis for an award of these costs clearly exists." Bricklayers' Local Union No. 8 Pension Fund v. Masonry Contractors,

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[2] § 1145 states:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

Inc., 721 F.2d 326, 327 (11th Cir. 1983) (per curiam); see also Operating Engineers Pension Trust v. A-C Co., 859 F.2d 1336, 1343 (9th Cir. 1988) (awarding auditor's fees on contractual basis and under § 1132(g)(2)(D)); Carpenters Amended and Restated Health Benefits Fund v. John W. Ryan Construction Co., 767 F.2d 1170, 1175-76 (5th Cir. 1985) (same).

Settlement agreement (Count II) — General Elevator of Detroit argues that the January 1995 settlement agreement is invalid and unenforceable because plaintiffs' counsel negotiated the agreement directly without the permission of defendant's attorney in the garnishment proceeding. Defendants' posttrial brief, at 11-13. Such conduct is alleged to have violated Pennsylvania Rule of Professional Conduct 4.2.[3]

However, as found from the evidence presented at trial, garnishment counsel, King, consented to those negotiations. See supra ¶ 11. King's testimony to the contrary, that he did not give

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[3] Pa. Rule of Professional Conduct 4.2:

> Communication with Person Represented by Counsel.
>
> In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

The Pennsylvania Rules of Professional Conduct are applicable to actions before the United States District Court for the Eastern District of Pennsylvania. See E.D. Pa. Local Rule 83.6.IV(b).

his consent, tr. at 68-69, was not credited. His inaction after receiving a notice of the release of the garnishment and his admission that he assumed it was the result of Scott's unrepresented negotiations are inconsistent with his alleged fear of prejudice for his client. He took no steps to find out the circumstances of the release. Tr. at 74. In contrast, plaintiffs' attorney Adam testified that he obtained King's express consent to the negotiations and prepared a letter documenting the consent. He did not send the letter because he was instructed that plaintiffs wanted delinquent vacation pay to be included in any settlement. Tr. at 83-85, 87. Crediting Adam's testimony, there was no violation of Rule 4.2.

The thrust of Douglas Scott's testimony appeared to be that in signing the settlement agreement he did not intend to obligate General Elevator of Detroit to pay the outstanding judgments owed by General Elevator of Michigan. The parties, however, stipulated that he did intend to do so. Am. pretr. stip., at 3-4, ¶ 8. His testimony, moreover, was disingenuous.[4] He stated that, in signing the settlement agreement, he believed

[4] For example: (1) there was nothing unusual or potentially misleading for General Elevator of Michigan and General Elevator of Detroit to use identical stationery and checks marked "General Elevator Company." Tr. at 19-20; (2) a $2,000 payment sent after the signing of the settlement agreement was made by General Elevator of Michigan rather than General Elevator of Detroit because "that's who I believed owed the money." Tr. at 22; (3) in a letter he had signed as president of General Elevator of Detroit, the use of the word "we" did not refer to General Elevator of Detroit. Tr. at 30; (4) When asked which entity he was representing, "I don't know if I was representing anybody. I was just interested in lifting the garnishment."

General Elevator of Detroit was responsible only for paragraphs 5 and 6, covering current contributions and vacation pay. He "didn't know who was responsible for [paragraphs 2-4, dealing with the outstanding judgments against General Elevator of Michigan], I just — I didn't believe that it was General Elevator of Detroit." Tr. at 16-17. However, plaintiffs and General Elevator of Detroit were the sole parties to the agreement. Joint exh. 7, at 1.

As to any potential ambiguity,[5] ample extrinsic evidence consisting of the parties' bargaining history and post-agreement conduct — see supra, e.g., ¶¶ 13, 16, 19-22, and, in particular, plaintiffs' January 12, 1995 counter-proposal, ¶ 14; joint exh. 6 — illuminated the intent and meaning of the agreement. American Flint Glass Workers Union v. Beaumont Glass Co., 62 F.3d 574, 580 (3d Cir. 1995) (ERISA-related settlement agreement governed by federal common law of contract inasmuch as Congress has not adopted a different standard); In re New Valley Corp., 89 F.3d 143, 150 (3d Cir. 1996) ("Extrinsic evidence may include the structure of the contract, the bargaining history, and the conduct of the parties that reflects their understanding of the contract's meaning. . . . [O]nce a contract provision is found to be ambiguous, extrinsic

[5] The preamble to the agreement states that "General" refers to General Elevator of Detroit. While paragraphs five through seven refer to "General," paragraphs two through four contain references to "General Elevator." Joint exh. 7. Scott suggested in his testimony that "General Elevator" signified a different entity from General Elevator of Detroit. Tr. at 43-45.

must be considered to clarify its meaning."), cert. denied, ___ U.S. ___, 117 S. Ct. 947, 136 L. Ed.2d 835 (1997).[6]

IV.

Conclusions of law

1. This court has jurisdiction over the parties and the subject matter of this action.

2. Defendant General Elevator of Detroit violated its collective bargaining agreement with Local 36 of the International Union of Elevator Constructors by failing to make required contributions to the funds under the Agreement and Declaration of Trust.

3. General Elevator of Detroit is liable to plaintiffs for delinquent contributions in the amount of $3,214.44.

4. Plaintiffs are entitled to $5,036.27 in interest on delinquent contributions.

5. Plaintiffs are entitled to $9,910.79 in liquidated damages.

6. Plaintiffs are entitled to $5,975 in auditor's fees.

7. In light of the consent of defendant's counsel, there was no violation of Pennsylvania Rule of Professional Conduct 4.2 during negotiations on the settlement agreement.

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[6] Because this claim is to enforce an employer's duty to make plan contributions under 29 U.S.C. § 1145, plaintiffs are also entitled to interest, attorney's fees and costs under 29 U.S.C. § 1132(g)(2)(B) and (D).

8. The settlement agreement between plaintiffs and defendant General Elevator of Detroit is valid and enforceable. Plaintiffs are entitled to $3,087.19, the balance due on C.A. No. 93-4147, and $68,505.44, the balance due on C.A. No. 94-1806.

9. Plaintiffs are entitled to additional interest due on the judgments in C.A. No. 93-4147 and C.A. No. 94-1806, as well as attorney's fees and costs.

10. Defendant Elevator Concepts, Inc., is not liable to plaintiffs.

A judgment will be entered based on this decision.

Edmund V. Ludwig, J.